

Minutes of the Louisiana Sentencing Commission
Hunt Correctional
6925 Hwy 74, St. Gabriel, LA 70776
October 17th, 2013
1:00 p.m.

The meeting was called to order by Honorable Ricky Babin at 1:05 p.m.

Members Present

Honorable Ricky Babin, Chairman
Honorable Charles Ballay
Mrs. Beverly Siemssen (proxy for Mr. Robert Barkerding)
Honorable Patricia Smith (proxy for Honorable Yvonne Dorsey Colomb)
Mr. John DiGiulio (proxy for Mr. David Dugas)
Mr. Richard Pittman (proxy for Mrs. Julie H. Ferris)
Honorable Fredricka Wicker (proxy for Honorable Greg Guidry)
Ms. Debbie Hudnall (by phone)
Ms. Angela Whittaker (proxy for Secretary Jimmy LeBlanc)
Honorable Dalton Honore (proxy for Honorable Joseph Lopinto)
Honorable Hans Liljeberg (proxy for Honorable Michael McDonald)
Mr. Rustin Legendre (proxy for Mr. Robert Mehrtens)
Honorable Helena Moreno
Honorable Helena Moreno (proxy for Honorable Laurie White)

Committee and Advisory Members

Ms. Kim Barnette, DPS&C
Scott Brandt, ALBU
Mr. Darryl Campbell, DOC
Mrs. Ann Carmon, 5th Circuit
Mr. Rhett Covington, DOC
Mr. Frank DiFulco, LASC
Jennifer Eagan
Mr. Steven Farber, OJJ
Robb Farmer, ALBU
Ms. Melanie Gueho, DOC
Mr. Carle Jackson, LCLE
William L. Kline
Natalie LaBorde, Governor's Office
Sandra Laborie, 5th Circuit Court
Edward McCaulliffe, Orleans Parish DA
Ms. Genie Powers, DOC/P&P
Sarah Tirrell, EBRDA
Mrs. Jennifer Watson, LCLE
Ms. Opal West, LCLE
Mr. Robert Wyatt, 14th JDC

Guests

Ms. Danielle DeShields, CAPARC
Dr. Donna Jackson, Amethyst & Assoc.
Mr. Kevin Kane, Pelican Institute

George Mills, Cenikor
Mr. Roy Sanchez, CAHSD
Carole Turner, CAPRC
Ms. Franzia Webber, Amethyst & Assoc.
Ms. Lydia Williams, CAPARC
Mr. James Windom, CAPARC
Mr. Checo W. Yancy, LA CURE/Re-Entry

I. Welcome and Introductions

Honorable Ricky Babin, Chairman introduced guests Representative Dalton Honore and Representative Patricia Smith. He thanked the staff of Hunt Correctional Center for allowing the Sentencing Commission to meet at their facility. Roll Call was taken by Jennifer Watson, LCLE.

II. Approval of Minutes

Motion by Honorable Charles Ballay; seconded by Mr. John DiGiulio. The motion passed without objection.

III. Offender Education Working Group

Ms. Kim Barnette, DOC Education

A DOC, LSU, and Louisiana Association for Adult Education joined together to create a comprehensive survey to assess the reasons offenders drop out of school. The survey is to assist in the development of preventive measures. So far 3,000 responses to survey have been received.

B GED testing is transitioning from nonprofit to for profit basis. Pearson Review, a for profit company, has the contract for GED testing. This transfer of the GED program creates challenges for inmate education primarily in the area of cost. Currently, DOC covers the cost of GED testing for those inmates needing it. Under the old GED testing system, the cost was \$50 per examination. After the transfer to the for profit company, the cost jumps to \$120 per inmate. Since DOC has a limited amount of funding available for this purpose, the cost increase reduces by more than half the number of inmates who can complete their GED. Offenders can make up one section post release if they do not pass that section. This would further add to the cost and discourage completion of the program. This has real consequences in terms of recidivism, as inmate education is known to be one of the most cost-effective measures in terms of reducing recidivism, and a GED is often a gateway into better employment opportunities making the chances of successful re-entry higher.

In response to this situation, several states, including Louisiana, are considering alternative methods to attain certification for high school equivalency. LSU's office of adult education issued a Request for Proposal (RFP) for the development of an alternative system. Meanwhile, the Louisiana Association for Adult Education has decided to test with Hassat, a company offering an alternative to the existing GED. Hassat offers a \$50 test that can be taken either as a paper and pencil version or a computerized version. This test measures the same things that the current GED measures.

DOC has to pay \$300 for examiner to come into prison each time exam conducted. DOC is allowed to have their own examiners as long as they are not with the education department, have BA, and are employed with DOC. A few examiners have been identified at state facilities. Ten chief examiners for state will be trained at end of month.

C. MERGER OF ADULT EDUCATION

The Office of Adult Education receives a federal grant allocation each year. The Department of Education receives 3% of that grant. Out of that 3%, the State is allowed to spend 10% on Corrections. This 10% maximum is \$1 million. 6% can be used by local correctional facilities. In the future, all local jails and detention educational programs will be transferred to DOC education. DOC education will need to prepare a report on these students to state and federal authorities. Kim Barnette has met with Bossier Parish Detention Center, David Wade Correctional Center, and Bayou Dorcheat Correction Center in Webster parish. DOC education will take over LaFourche Parish inmate adult education, and a part of Rapides Parish inmate adult education. DOC plans to supplement what is already being done with adult education dollars at these facilities.

Honorable Ricky Wicker asked Ms. Barnette which local facilities are not providing adequate education commiserate with state inmate population and for Ms. Barnette to provide a list of those facilities which house state prisoners where local parish government is NOT taking the 6% available to them for correctional education. Ms. Barnette answered she is working on a report with Sean Martin that will answer these questions.

Ms. Barnette noted that Local school boards are required by federal law to serve students under the age of 20. Local detention centers and jails housing school age persons are supposed to be served by local education agencies. Many school boards do not want to take on incarcerated students who may not complete the school term because they may be released from jail before completing the term. This would hurt their school system's score on the Department of Education report card. Ms. Barnette suggested the simplest solution is to have the department of education allow School Boards to count DOC students separately as an agency, so that this population would not affect the school system's scores. She further noted that such a program exists for juveniles held in juvenile facilities, but not for adult facilities.

Rep. Helena Moreno asked what the consequences for non-compliance with the requirement to provide educational services were. Ms. Barnette replied none existed.

Honorable Charles Ballay asked if there are any volunteers to help with DOC education. Ms. Barnette answered there were volunteers but no relationships had been established with specific community organizations. Some highly educated inmates take the opportunity to become certified tutors. Mr. Ballay suggested beginning a public relations programs campaign seeking volunteers to help with adult education. This is something corporations may encourage and may even provide incentives for participation, as they do with programs like CASA. Ms. Barnette agreed this was a good idea for local jails but that too many hurdles exist for volunteers to get involved with state prisoners.

Judge Wicker requested a list of facilities that house juvenile or adult state offenders who DO provide programming.

IV. OUI Revision

Honorable Ricky Babin, Chairman

The rewrite of the OUI recommendation is to make the statute easier to read and apply but contains no substantive changes. This is not a watering down of the OUI law. Honorable Ricky Babin, Chairman, suggested getting the recommendation vetted before the DA's meeting in November. Honorable Ricky Wicker motioned to vet the proposal. Representative Patricia Smith seconded. The motion passed with no opposition.

Judge Wicker will ask Norma Broussard to create a power point for the DA's to clarify changes.

V. Committee Reports

Honorable Ricky Babin, Chairman

A. Front End Committee

Honorable Ricky Wicker

i. A draft of the Theft statute revision will be ready by November 7th that will:

- Reduce the existing 28 theft statutes down to smaller statutes
- Adjust penalties to better conform with other southern states
- Amend some penalties
- Reduce the number of statutes by 10
- Add discretion to restitution
- Clarify how value is determined
- Give Judge discretion to forfeit instrumentality of the crime

The series of statutes that could be called Fraud will stand unmodified until next session, when the team will rewrite a statute called "Theft by Fraud".

Rep. Honore asked if the penalties in the southern states are more harsh than other states. Honorable Ricky Wicker answered yes, but the penalties are based on data and political climate. However, Arkansas, Texas, Kentucky, North Carolina, South Carolina, and Georgia are engaged in sentencing reforms that may affect theft. She said the workgroup is considering increasing the threshold limits, but specific threshold limits have not been determined.

ii. Drug Law Revision

- a Marijuana –Work has begun. The subgroup will meet Wednesday at 2 pm.
- b Other drug statutes - The subgroup will meet Wednesday at 2 pm.
- c Drug court/ Specialty court - Carla Sigler responsible for the rewrite. The team will recommend an adjustment to the drug court statute to allow us to engage in mental health and DA courts.

iii. DWI Statute Revision – previously reviewed

iv. Sentencing Workbook – not reviewed

v. Bail and Bond Statute Revision – A draft will be ready to be vetted through DAs for the fall meeting. Recognizance bonds will be worked on separately. The bail bond statute rewrite is in its 2nd year of work. The bill failed in legislature and was referred to the Law Institute. The next Law institute meeting will be November 17th.

vi. Pretrial Services –Workgroup's concentration is on issue of reduction of judicial discretion permitting offenders to sign out on relative's signature. Group will discuss results compared to other areas of country with lower recidivism rate even with offenders coming back to court. Recommendations will have to be vetted by DAs.

vii. Use of Risk/Needs Assessment at Sentencing – Honorable Rusty Knight reported to Honorable Ricky Wicker that the pilot program on the use of risk/ needs assessment at sentencing in the 22nd JDC is off to a rough

start. The Court will meet with workgroup to amend legislation. The Court is in negotiations with the DA to get to resolve the issues.

- viii. Home Incarceration and Electronic Monitoring – Darryl Campbell has sent a survey to judges to see what providers are being used. His goal is to get judicial administrators to look at survey within two weeks. The team will meet before next Friday, October 25th.
- ix. Non-Drug Statute Minimum Mandatory Review – Law students will have completed gathering data by next Friday, October 25th. The results will be sent to Natalie Laborde and then the workgroup can begin their analysis.

B. Release Mechanisms Committee
Honorable Hans Liljeberg

- i. Geriatric and Medical Release –Headed by Dr. Raman Singh, Jerrie LeDoux. Dr. Raman Singh has begun a draft of comparison with other states. The first draft will be ready in two weeks.
- ii. Multi-Offender Statutes - Headed by Keith Nordyke. The team will leave front end of the statute alone that allows prosecutors ability to multiple bill offenders, but will amend "back end" of statute. This will largely be public education campaign. The team will meet with DAs that use 529.1
- iii. Crimes of Violence/Mandatory Minimum -Headed by Carle Jackson – Began with 8 named crimes of violence. Now there are 44. The team will divide crimes of violence into two categories: 1 – violent by element of the crime; 2 – elements of the crime don't require that the offense is necessarily a violent crime. In the case of Category 2, the prosecution may bill the defendant for crime of violence or not. The draft proposal will be circulated for comment. This will affect good time/parole eligibility dates as well as collateral consequences.

The expansion of the minimum mandatory waiver is under consideration. At this time, the recommendation is to not consider sex offender statutes at this time.

- iv. Parole for 3rd Offenders - Tracy DiBenedetto – Will have something in next 2 weeks.

C. Re-Entry and Evidence Based Corrections
Mr. Rhett Covington

- i. Education Update – see above
- ii. Substance Abuse - Lafayette white paper completed.
 - Mapping of substance abuse.
 - Providers throughout state,
 - different assessment instruments
 - sentencing
- iii. Workforce Development – has not met. Mr. Covington will check with Whalen Gibbs to see when next meeting will be.

- iv. Housing – Louisiana is part of a multi-state housing policy. Group will put together strategic plan to end chronic homelessness by 2015 and explore best practice regarding housing authority, including recently reduced regulations
- v. Social Support – Working on mentoring and peer support paradigms. The group is discussing how to vet /approve peer support offenders to participate in the program.
- vi. Re-Entry Court – This new group has not met yet.
- vii. Expungement – Intent document created. The group is debating whether it should break into sub-groups for each stage or if should deal with expungement as a whole.

Third JDC Assistant District Attorney Andy Sheily is trying to redraft the uniform expungement form that previously failed after being vetted by the Law Institute.

Problems arose with the form in regards to:

- Who can apply for expungement
- What form to use
- Forms and rules changing from jurisdiction to jurisdiction
- Statutory scheme

D. Research and Technology Committee

Mr. Frank DiFulco

Ms. Melanie Gueho

Mr. Frank DiFulco briefed attendees on the Uniform Charge Code. Entry of theft statues into the data base will be completed by next week.

In the Uniform Charge Code, complications arise when certain offenses happen together; for example R.S. 40:979 attempt and conspiracy with a Schedule 1. DAs can also use the general attempt statute (R.S.14:27). Honorable Ricky Wicker requested an email to show what it looks like when a bill of information is written for violation of 14:27 AND 40-966D. She asked how this should be billed. Mr. DiFulco answered you can bill on either one – either 14:27 or 40:979. Judge Wicker noted it was important to get the drug offense on record when an attempt or conspiracy is charged and the specialized statute in Title 40 is not used.

The disposition reporting subcommittee meeting will be on October 24th. Disposition reporting impacts state criminal history and national rap sheet.

The revision of the Uniform Commitment Order form was sent to Clerks' Association and the committee has received their comments. With this information, now the group can respond to Tammy Foster of the Clerks of Court Association. Judge Wicker told Debbie Hudnall a training seminar should be conducted at the next Clerk's Association meeting.

Melanie Gueho has sent data sheets for drug, habitual offenders and 3rd offenders have been sent to state police for additional data on criminal history. She will send data sheets on possession only after the meeting.

E. Justice Reinvestment Oversight Committee
Honorable Ricky Wicker

In coordination with the Judicial College and the DOC, the JRI Committee sought a Bureau of Justice Assistance grant to support a training effort on the implementation of legislation like administrative sanctions and waiving of minimum sentences. This training will be for Judges, DAs, and probation officers. The grant budget has been prepared. The contract will be signed shortly, and the money should come in in the next couple of months.

F. Public Education and Outreach Committee
Honorable John Michael Guidry

Honorable Ricky Wicker spoke on behalf of Honorable John Michael Guidry who was absent. The Committee has not been set up yet.

VI. Other business

Judge Wicker will make presentation of the Sentencing Commission's work to the Louisiana District Attorney's Association (LDAA) fall meeting at the Renaissance Hotel in Baton Rouge.

Representative Honore asked the group about legislation that Governor Jindal signed that increased good time from 250 days to 360 days. How can inmates obtain the additional 110 days? Melanie Gueho answered there should be enough classes or programming available for inmates to accrue enough credit to sum up to 360 days. Correspondence courses are an alternative. She clarified that inmates can retake class they have not received credit for, but cannot receive double credit for taking the same class twice.

VII. Honorable Helena Moreno motioned to adjourn. Seconded by Honorable Charles Ballay. No objections. The meeting was adjourned at 2:40 p.m.